

1 NEAL S. SALISIAN, SBN 240277
neal.salisian@salisianlee.com
2 GLENN R. COFFMAN, SBN 305669
glenn.coffman@salisianlee.com
3 JARED T. DENSEN, SBN 325164
jared.densen@salisianlee.com
4 **SALISIAN | LEE LLP**
550 South Hope Street, Suite 750
5 Los Angeles, California 90071-2924
Telephone: (213) 622-9100
6 Facsimile: (800) 622-9145

7 MARISA D. POULOS (SBN 197904)
marisa.poulos@balboacapital.com
8 **BALBOA CAPITAL CORPORATION**
575 Anton Boulevard, 12th Floor
9 Costa Mesa, California 92626
Tel: (949) 399-6303

10 Attorneys for Plaintiff
11 AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION
12
13

14 THE UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
16

17 AMERIS BANK, a Georgia state-
18 chartered banking corporation, doing
business as BALBOA CAPITAL
CORPORATION,

19 Plaintiff,

20 vs.

21 MONTANTE PLASTIC SURGERY &
22 AESTHETICS, LLC, a Virginia Limited
Liability Company; STEVEN
23 MONTANTE, an individual; SHELLY
MONTANTE, an individual,
24

25 Defendants.
26
27
28

Case No. 8:24-cv-00095-JVS(KESx)

[Assigned to the Hon. James V. Selna]

**BALBOA CAPITAL
CORPORATION'S MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANTS**

Complaint Filed: January 16, 2024
Trial Date: None

1 TO THE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 10, 2024, at 1:30 p.m., or as soon
3 thereafter as the matter may be heard, in Courtroom 10C of the 411 West 4th Street,
4 Santa Ana, California 92701-4516, the Honorable James V. Selna presiding,
5 plaintiff Ameris Bank, doing business as Balboa Capital Corporation (“Plaintiff” or
6 “Balboa”) will, and hereby does, apply for an entry of default judgment pursuant to
7 Federal Rules of Civil Procedure Rule 55 and Local Rules 55-1, 55-2, and 55-3,
8 against defendants Montante Plastic Surgery & Aesthetics, LLC, a Virginia limited
9 liability company (“Montante”), Steven Montante, an individual (“Steven”), and
10 Shelly Montante, an individual (“Shelly”) (collectively, “Defendants”), for a
11 judgment amount of **\$115,006.60**.

12 PLEASE TAKE FURTHER NOTICE that Balboa seeks a default judgment
13 against Defendants in the total amount of \$115,006.60, as Balboa has established
14 (a) a sum certain due and owing by Defendants to Balboa pursuant to the
15 Equipment Financing Agreements entered into by Defendants and Balboa; (b) that
16 Defendants are not in military service and are neither minors or incompetent
17 persons; and (c) costs and attorneys’ fees are properly awardable.

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 PLEASE TAKE FURTHER NOTICE that this motion is based on this
2 Notice of Motion, the supporting Memorandum of Points and Authorities, the
3 supporting declarations of Jared T. Densen and Don Ngo, and the exhibits attached
4 thereto, the pleadings and papers filed in this action, and upon such further briefing,
5 authorities, and argument submitted to the Court prior to, or during, the hearing on
6 this matter.

7
8 DATED: April 26, 2024

SALISIAN | LEE LLP

9
10 By: 

Jared T. Densen

11 Neal S. Salisian

12 Glenn R. Coffman

13 Attorneys for Plaintiff
14 AMERIS BANK d/b/a BALBOA CAPITAL
15 CORPORATION
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION AND RELEVANT FACTS	1
A.	Breach of Equipment Financing Agreement No. 1.	1
B.	Breach of Equipment Financing Agreement No. 2.	3
C.	Attorneys’ Fees and Costs	4
D.	Default Judgment Motion	5
II.	LEGAL ARGUMENT	6
A.	Plaintiff Will Be Highly Prejudiced If Its Default Judgment Motion Is Denied.	7
B.	Plaintiff Has A High Likelihood Of Success On The Merits Of Its Substantive Claims And Its Complaint Is Sufficiently Pled.....	9
C.	The Sum Of Money At Stake Favors An Entry Of A Default Judgment Against Defendant.....	13
D.	There Are No Material Facts That Are Reasonably In Dispute.	14
E.	Defendants’ Defaults Are Not The Result Of Excusable Neglect.....	17
F.	Policy Concerns Favor Default Judgment In This Matter.	19
G.	Plaintiff Has Proven Its Damages.	20
III.	CONCLUSION	23

TABLE OF AUTHORITIES

CASES

<i>Acoustics, Inc. v. Trepte Constr. Co.,</i> 14 Cal.App.3d 887, 916 (1971).....	9
<i>Draper v. Coombs,</i> 792 F.2d 915, 924 (9th Cir. 1986).....	17
<i>Educational Serv., Inc. v. Maryland State Board for Higher Education,</i> 710 F.2d 170, 176 (4th Cir. 1983).....	18
<i>Eitel v. McCool,</i> 782 F.2d 1470, 1471-72 (9th Cir. 1986).	6, 7, 9, 13, 14 17
<i>Geddes v. United Fin. Group,</i> 559 F.2d 557, 560 (9th Cir. 1977).....	9, 14
<i>Landstar Ranger, Inc. v. Parth Enters, Inc.,</i> 725 F.Supp.2d 916, 921 (C.D. Cal. 2010)	15
<i>McKnight v. Webster,</i> 499 F.Supp. 420, 424 (E.D. PA 1980)	18
<i>NewGen, LLC v. Safe Cig, LLC,</i> 804 F.3d 606, 616 (9th Cir. 2016).....	17, 19
<i>O'Connor v. State of Nevada,</i> 27 F.3d 357, 364 (9th Cir. 1994).....	18
<i>Pena v. Seguros La Comercia, S.A.,</i> 770 F.2d 811, 814 (9th Cir. 1985).....	19
<i>Penpower Tech, Ltd. v. S.P.C. Tech.,</i> 627 F. Supp. 2d 1083 (N.D. Cal. 2008)	13, 14, 19
<i>PepsiCo, Inc. v. Cal. Sec. Cans,</i> 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).	7, 9
<i>Reichert v. Gen. Ins. Co.,</i> 68 Cal.2d 822, 830 (1968).....	9
<i>Shanghai Automation Instrument Co. Ltd. v. Kuei,</i> 194 F.Supp.2d 995, 1005 (N.D. Cal. 2001)	18

1 *Walters v. Statewide Concrete Barrier, Inc.*,
2 No. C 04-2559 JSW, 2006 WL 2527776, at *4 (N.D. Cal. Aug. 30, 2006)..... 13

3 **STATUTES**

4 Code of Civil Procedure § 1620 9

5 Code of Civil Procedure § 3300 9

6 Fed. R. Civ. P. 55..... 6

7 **OTHER AUTHORITIES**

8 RESTATEMENT 2d. CONTRACTS § 235(2)..... 9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTS

Plaintiff Ameris Bank, a Georgia state-chartered banking corporation, doing business as Balboa Capital Corporation (“Plaintiff” or “Balboa”) submits the instant Motion for Default Judgment against defendants Montante Plastic Surgery & Aesthetics, LLC, a Virginia limited liability company (“Montante”), Steven Montante, an individual (“Steven”), and Shelly Montante, an individual (“Shelly”) (collectively, “Defendants”).

A. Breach of Equipment Financing Agreement No. 1.

This action involves a claim for damages by Balboa against Defendants for the breach of the written Equipment Financing Agreement No. 355015-000 (“EFA No. 1”), and the breach of the corresponding personal guaranty of that agreement. [See Declaration of Don Ngo (“Ngo Decl.”), ¶3, Exh. A.]

Specifically, Balboa, on the one hand, and Montante, and Steven and Shelly, on the other, entered into EFA No. 1 on or about March 30, 2021. [See *id.*] Under the terms of EFA No. 1, Balboa loaned to Montante the sum of \$78,440.00, in order to finance equipment for its business (“Collateral No. 1”). [See *id.*]

Concurrent with the execution of EFA No. 1, and in order to induce Balboa to enter into EFA No. 1 with Montante, Steven and Shelly each personally guaranteed, in writing, the payment of the then-existing and future indebtedness due and owing to Balboa under the terms of EFA No. 1 (“Guaranty No. 1”). [See *id.*, ¶4, Exh. A.] Balboa relied on such Guaranty No. 1 to agree to finance Collateral No. 1 for Montante’s business. [See *id.*]

Under EFA No. 1, Montante was required to make six (6) monthly payments of \$99.00, and sixty (60) monthly payments of \$1,739.14 beginning on April 29, 2021. [See *id.*, ¶5, Exh. B.] The last payment received by Balboa was credited toward the payment due for October 29, 2023. [See *id.*] Therefore, on November 29, 2023, Montante breached EFA No. 1, and Steven and Shelly each breached

1 Guaranty No. 1, by failing to make the monthly payment due on that date, and thus,
2 both have remained continuously in default. [*See id.*]

3 At the time of Defendants' default, in addition to the late charges in the sum
4 of \$313.05, there remained thirty-five (35) monthly payments in the amount of
5 \$1,739.14, for a total of \$61,182.95, due to Balboa. [*See id.*, ¶6.]

6 Pursuant to the "Default and Remedies" section on page 3 of EFA No. 1, in
7 the event of a default, Balboa may: "... (c) accelerate and declare all sums due and
8 to become due hereunder immediately due and payable, all future payments
9 discounted at 3% as calculated by us ..." [*See id.*, ¶7.] Balboa's calculation of the
10 3% discount is made pursuant to a present-value ("PV") accounting formula that is
11 calculated to discount each future monthly accelerated payment down to what the
12 present value would in today's dollar figure. [*See id.*] For example, a payment
13 owed exactly one year from today would be discounted by the full 3%, whereas
14 earlier payments would be discounted by less, and further payments would be
15 discounted by more. [*See id.*] Based upon this formula, Balboa calculated that the
16 amount due totaled \$58,813.38. [*See id.*]

17 Following the date of default and after the commencement of this Action,
18 Defendants made two (2) further monthly payment in full for November 29, 2023
19 and December 29, 2023. [*See id.*, ¶8.] As such, Balboa has credited Defendants in
20 the amount of \$3,478.28, and subtracted that total from the amount sought by way
21 of this Motion, thus totaling **\$55,335.10** remaining owed to Balboa. [*See id.*]
22 Defendants have since failed to make further payments. [*See id.*]

23 In addition, based on the amount due of \$55,335.10, Balboa is entitled to
24 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
25 November 29, 2023, the date of breach, to June 10, 2024, the date noticed for the
26 hearing of this Motion for Default Judgment ("Default Motion"), for a total interest
27 amount of **\$2,941.04**, accruing at a rate of **\$15.16 per day**, until the entry of
28

1 judgment. [*See id.*, ¶9; *see also* Declaration of Jared T. Densen (“Densen Decl.”),
2 ¶¶5-6.]

3 **B. Breach of Equipment Financing Agreement No. 2.**

4 This action also involves a claim for damages by Balboa against Defendants
5 for the breach of the written Equipment Financing Agreement No. 355015-001
6 (“EFA No. 2”), and the breach of the corresponding personal guaranty of that
7 agreement. [*See* Ngo Decl., ¶11, Exh. C.]

8 Specifically, Balboa, on the one hand, and Montante, and Steven and Shelly,
9 on the other, entered into EFA No. 2 on or about March 31, 2021. [*See id.*] Under
10 the terms of EFA No. 2, Balboa loaned to Montante the sum of \$64,200.00, in order
11 to finance equipment for its business (“Collateral No. 2”). [*See id.*]

12 Concurrent with the execution of EFA No. 2, and in order to induce Balboa
13 to enter into EFA No. 2 with Montante, Steven and Shelly each personally
14 guaranteed, in writing, the payment of the then-existing and future indebtedness due
15 and owing to Balboa under the terms of the EFA No. 2 (“Guaranty No. 2”). [*See*
16 *id.*, ¶12, Exh. D.] Balboa relied on such Guaranty No. 2 to agree to finance
17 Collateral No. 2 for Montante’s business. [*See id.*]

18 Under EFA No. 2, Montante was required to make six monthly payments of
19 \$99.00, and sixty (60) monthly payments of \$1,421.22, beginning on June 14, 2021.
20 [*See id.*, ¶13, Exh. F.] The last payment received by Balboa was credited toward
21 the payment due for November 14, 2023. [*See id.*] Therefore, on December 14,
22 2023, Montante breached EFA No. 2, and Steven and Shelly breached Guaranty
23 No. 2, by failing to make the monthly payment due on that date, and thus, both have
24 remained continuously in default. [*See id.*]

25 At the time of Defendants’ default, in addition to the late charges in the sum
26 of \$255.82, there remained thirty-five (35) monthly payments in the amount of
27 \$1,421.22, for a total of \$49,998.52, due to Balboa. [*See id.*, ¶14.]
28

1 Pursuant to the “Default and Remedies” section on page 3 of EFA No. 2, in
2 the event of a default, Balboa may: “... (c) accelerate and declare all sums due and
3 to become due hereunder immediately due and payable, all future payments
4 discounted at 3% as calculated by us ...” [See *id.*, ¶15.] Balboa’s calculation of the
5 3% discount is made pursuant to a present-value (“PV”) accounting formula that is
6 calculated to discount each future monthly accelerated payment down to what the
7 present value would in today’s dollar figure. [See *id.*] For example, a payment
8 owed exactly one year from today would be discounted by the full 3%, whereas
9 earlier payments would be discounted by less, and further payments would be
10 discounted by more. [See *id.*] Based upon this formula, Balboa calculated that the
11 amount due totaled \$48,062.11. [See *id.*]

12 Following the date of default and after the commencement of this Action,
13 Defendants made one (1) further monthly payment in full for December 14, 2023
14 and one (1) partial for January 14, 2024 for \$100.50. [See *id.*, ¶16.] As such,
15 Balboa has credited Defendants in the amount of \$1,521.72, and subtracted that
16 total from the amount sought by way of this Motion, thus totaling **\$46,540.39**
17 remaining owed to Balboa. [See *id.*] Defendants have since failed to make further
18 payments. [See *id.*]

19 In addition, based on the amount due of \$46,540.39, Balboa is entitled to
20 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
21 November 14, 2023, the date of breach, to June 10, 2024, the date noticed for the
22 hearing of this Default Motion, for a total interest amount of **\$2,282.25**, accruing at
23 a rate of **\$12.75 per day**, until the entry of judgment. [See *id.*, ¶17; see also Densen
24 Decl., ¶¶8-9.]

25 **C. Attorneys’ Fees and Costs**

26 Pursuant to Paragraph 20 of EFA No. 1 and EFA No. 2 Balboa is entitled to
27 recover its attorneys’ fees and costs from Defendant. [See Densen Decl., ¶¶7, 10,
28 13, and 16 .] The amount of reasonable attorneys’ fees is fixed by Local Rule 55-3,

1 in the sum of **\$3,813.40** for EFA No. 1 and **\$3,392.42** for EFA No. 2. [*See id.*]
2 Balboa has incurred **\$702.00**, in recoverable costs - \$405 for filing of the
3 Complaint, \$99.00 for service upon Montante, \$99.00 for service upon for Steven,
4 and \$99.00 for service upon Shelly. [*See id.*]

5 **D. Default Judgment Motion**

6 Balboa's Default Motion satisfies the procedural requirements of Local Rule
7 55-1 and 55-2, and Federal Rule of Civil Procedure 55(b). Balboa filed its
8 Complaint and case-initiating documents on January 16, 2024. [*See* Dkts. 1-4.]
9 Montante was properly served on January 25, 2024, Steven and Shelly were both
10 served on March 15, 2024, pursuant to Federal Rule of Civil Procedure 4. [*See*
11 Dkt. 10, 16-17.] On March 6, 2024, Balboa filed its Request for Clerk to Enter
12 Default against Montante ("Default Entry Request"), on April 24, 2024 Balboa filed
13 its Default Entry Request against Steven and Shelly, and the Clerk entered the
14 default against Montante on March 7, 2024, and against Steven Shelly on April 25,
15 2024. [*See* Dkts. 12-13, 18-19.]

16 Defendant are not minors or incompetent persons, nor are Defendants
17 currently in the military service or otherwise exempt from a default judgment under
18 the Servicemembers Civil Relief Act ("SCRA"). [*See* Densen Decl., ¶4, Exh. F.]

19 Moreover, this Court has subject matter jurisdiction over the instant action.
20 The amount in controversy, as alleged in the Complaint and as set forth herein,
21 exceeds \$75,000. [*See* Dkt. 1.] Plaintiff Balboa was and still operates as a
22 California corporation, with its principal place of business in Orange County,
23 California. [*See* Dkt. 1, ¶1; *see also* Densen Decl., ¶11.] Balboa is also now a
24 wholly owned subsidiary of Ameris Bank, and operating as a division of Ameris
25 Bank, a Georgia state-chartered banking corporation, and accordingly, Balboa is a
26 citizen of the State of California, as well as the State of Georgia, via its parent
27 company, Ameris Bank. [*See id.*]
28

1 Defendant Montante is a Virginia limited liability company, with its principal
2 place of business in Richmond County, Virginia. [See *id.*, ¶12.] Upon information
3 and belief, none of Montante’s members, directors, and/or officers, including
4 defendants Steven and Shelly, are resident of Georgia or California. [See *id.*, Exh.
5 H.] Steven and Shelly are residents of the State of Virginia. [See Dkt. 1, 16-17.]
6 As such, there exists complete diversity amongst the parties. [See *id.*, ¶13.]

7 As set forth below, a default judgment should be entered against the
8 Defendant since Balboa satisfies all seven factors under *Eitel*. Moreover, Balboa
9 has adequately proven its damages. Thus, Balboa respectfully requests that this
10 Court grant its request for a default judgment against Defendant in the amount of
11 **\$115,006.60.**

12 **II. LEGAL ARGUMENT**

13 “When a party against whom a judgment for affirmative relief is sought has
14 failed to plead or otherwise defend,” the Court may enter a judgment of default
15 upon Plaintiff’s application after an entry of default. See Fed. R. Civ. P. 55. Local
16 Rule 55 sets forth the procedural requirements that must be satisfied by a party
17 moving for a default judgment. Balboa’s Motion has satisfied such requirements.

18 Here, Balboa filed its Complaint and case-initiating documents on January
19 16, 2024. [See Dkts. 1-4.] Montante was properly served on January 25, 2024,
20 Steven and Shelly were both served on March 15, 2024, pursuant to Federal Rule of
21 Civil Procedure 4. [See Dkt. 10, 16-17.] On March 6, 2024, Balboa filed its
22 Default Entry Request against Montante, on April 24, 2024 Balboa filed its Default
23 Entry Request against Steven and Shelly, and the Clerk entered the default against
24 Montante on March 7, 2024, and against Steven Shelly on April 25, 2024. [See
25 Dkts. 12-13, 18-19.]

26 Defendant are not minors or incompetent persons, nor are Defendants
27 currently in the military service or otherwise exempt from a default judgment under
28

1 the SCRA. [See Densen Decl., ¶4, Exh. F.] Additionally, Defendants are not
2 residents of California or Georgia. [See *id.*]

3 The Ninth Circuit follow the seven *Eitel* factors in deciding whether to enter
4 a default judgment:

5 (1) the possibility of prejudice to the plaintiff; (2) the merits
6 of plaintiff's substantive claim; (3) the sufficiency of the
7 complaint; (4) the sum of money at stake in the action; (5)
8 the possibility of a dispute concerning material facts; (6)
9 whether the default was due to excusable neglect; and (7)
10 the strong policy underlying the Federal Rules of Civil
11 Procedure favoring decisions on the merits.

12 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). A plaintiff need not
13 prove that all seven factors weigh in its favor, as courts *may* consider these factors
14 in their discretion on whether to enter a default judgment. *See id.*

15 Here, the underlying facts in this action show that all seven of the *Eitel*
16 factors weigh in Balboa's favor, and thus, supports the entry of default judgment.

17 **A. Plaintiff Will Be Highly Prejudiced If Its Default Judgment**
18 **Motion Is Denied.**

19 A situation in which a plaintiff will be without any other recourse or recovery
20 should its default judgment application be denied qualifies as prejudice. *See*
21 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

22 Here, Balboa has submitted its Motion for Default Judgment as a last resort
23 due to Defendant's deliberate unwillingness to accept responsibility for its actions
24 or even acknowledge Balboa's allegations.

25 The fact remains that Balboa, pursuant to EFA No. 1, financed Collateral No.
26 1 for Defendants, with Defendants agreeing to make six (6) monthly payments of
27 \$99.00, and sixty (60) monthly payments of \$1,739.14, thirty-five (35) monthly
28 payments in the amount of \$1,739.14, in addition to the late charges in the sum of
\$313.05, for a total of \$61,182.95, still remained due to Balboa at the time of
Defendant's default. [See Ngo Decl., ¶¶5-6, Exh. B.]

1 Pursuant to the “Defaults and Remedies” section of page 3 of EFA No. 1,
2 Balboa applies a 3% PV discount to all accelerated payments. [See *id.*, ¶7.] Based
3 upon this accounting formula, Balboa calculated that the amount due total
4 \$58,813.38. [See *id.*]

5 Furthermore, following the date of default, Defendants made two (2) further
6 monthly payment in full for November 29, 2023 and December 29, 2023. [See *id.*,
7 ¶8.] As such, Balboa has credited Defendants in the amount of \$3,478.28, and
8 subtracted that total from the amount sought by way of this Motion, thus totaling
9 **\$55,335.10** remaining owed to Balboa. [See *id.*] Defendants have since failed to
10 make further payments. [See *id.*]

11 Additionally, Balboa, pursuant to EFA No. 2, financed Collateral No. 2 for
12 Defendant, with Defendant agreeing to make six (6) monthly payments of \$99.00,
13 and sixty (60) monthly payments of \$1,421.22, thirty-five (35) monthly payments
14 in the amount of \$1,421.22, in addition to late charges in the sum of \$255.82, for a
15 total of \$49,998.52, still remained due to Balboa at the time of Defendant’s default.
16 [See Ngo Decl., ¶¶13-14, Exh. E.]

17 Pursuant to the “Defaults and Remedies” section of page 3 of EFA No. 1,
18 Balboa applies a 3% PV discount to all accelerated payments. [See *id.*, ¶15.]
19 Based upon this accounting formula, Balboa calculated that the amount due total
20 \$48,062.11. [See *id.*]

21 Furthermore, following the date of default, Defendants made one (1) further
22 monthly payment in full for December 14, 2023 and one (1) partial for January 14,
23 2024 for \$100.50. [See *id.*, ¶16.] As such, Balboa has credited Defendants in the
24 amount of \$1,521.72, and subtracted that total from the amount sought by way of
25 this Motion, thus totaling **\$46,540.39** remaining owed to Balboa. [See *id.*]
26 Defendants have since failed to make further payments. [See *id.*]

27 Balboa has made demands for its monies from Defendant and under the
28 Guaranty, all of which Defendant has failed to pay back. [See *id.*, ¶¶10, 18.]

1 Balboa filed its Complaint in this action to recover the monies owed on it,
2 but Defendant have been unwilling to participate in, or otherwise acknowledge, the
3 litigation. Balboa's Motion for Default Judgment is its final option for an attempt
4 at recovery, and without the Court granting the default judgment, Balboa will be
5 prejudiced and be denied its right to a judicial resolution of its presented claims.
6 *See PepsiCo*, 238 F.Supp.2d at 1177.

7 Moreover, if Balboa's Motion for Default Judgment is denied, it will suffer a
8 significant loss due to no fault of its own, and Defendant will obtain a significant
9 windfall of over \$115,000.00. Not only will the deliberate nonaction by Defendant
10 and their continued stalling techniques be unjustly rewarded, but Balboa will
11 effectively be penalized for its procedurally proper demands for the return of its
12 monies available through the court system's proper channels.

13 Balboa will be substantially prejudiced, especially with no other available
14 recourse, should its Motion for Default Judgment be denied, and thus, further
15 supports the Default Judgment against Defendant to be granted by this Court.

16 **B. Plaintiff Has A High Likelihood Of Success On The Merits Of Its**
17 **Substantive Claims And Its Complaint Is Sufficiently Pled.**

18 "The general rule of law is that upon default[,] the factual allegations of the
19 complaint, except those relating to the amount of damages, will be taken as true."
20 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Courts often
21 consider the second (merits of the claim) and third (sufficiency of the complaint)
22 factors under *Eitel* together. *See PepsiCo*, 238 F.Supp.2d at 1177.

23 The elements for a breach of contract are: (1) the existence of a contract, (2)
24 performance by the plaintiff of its obligations under the contract, (3) breach of the
25 contract by the defendant, and (4) resulting damages proximately caused by the
26 defendant's breach of contract. *Reichert v. Gen. Ins. Co.*, 68 Cal.2d 822, 830
27 (1968); *Acoustics, Inc. v. Trepte Constr. Co.*, 14 Cal.App.3d 887, 916 (1971); *see*
28 *also* Civ. Code §§ 1620, 3300; and RESTATEMENT 2d. CONTRACTS § 235(2).

1 Here, all elements are met. Specifically, Balboa, on the one hand, and
2 Montante, and Steven and Shelly, on the other, entered into EFA No. 1, under
3 which Balboa loaned to Montante the sum of \$78,440.00, in order to finance
4 Collateral No. 1 for its business. [See Ngo Decl., ¶3, Exh. A.]

5 Concurrent with the execution of EFA No. 1, and in order to induce Balboa
6 to enter into EFA No. 1 with Montante, Steven and Shelly each personally
7 guaranteed, in writing, the payment of the then-existing and future indebtedness due
8 and owing to Balboa under the terms of EFA No. 1 via Guaranty No. 1. [See *id.*,
9 ¶4, Exh. A.] Balboa relied on such Guaranty No. 1 to agree to finance Collateral
10 No. 1 for Montante's business. [See *id.*]

11 Under EFA No. 1, Montante was required to make six (6) monthly payments
12 of \$99.00, and sixty (60) monthly payments of \$1,739.14 beginning on April 29,
13 2021. [See *id.*, ¶5, Exh. B.] The last payment received by Balboa was credited
14 toward the payment due for October 29, 2023. [See *id.*] Therefore, on November
15 29, 2023, Montante breached EFA No. 1, and Steven and Shelly each breached
16 Guaranty No. 1, by failing to make the monthly payment due on that date, and thus,
17 both have remained continuously in default. [See *id.*]

18 At the time of Defendants' default, in addition to the late charges in the sum
19 of \$313.05, there remained thirty-five (35) monthly payments in the amount of
20 \$1,739.14, for a total of \$61,182.95, due to Balboa. [See *id.*, ¶6.]

21 Pursuant to the "Default and Remedies" section on page 3 of EFA No. 1, in
22 the event of a default, Balboa may: "... (c) accelerate and declare all sums due and
23 to become due hereunder immediately due and payable, all future payments
24 discounted at 3% as calculated by us ..." [See *id.*, ¶7.] Balboa's calculation of the
25 3% discount is made pursuant to a PV accounting formula that is calculated to
26 discount each future monthly accelerated payment down to what the present value
27 would in today's dollar figure. [See *id.*] For example, a payment owed exactly one
28 year from today would be discounted by the full 3%, whereas earlier payments

1 would be discounted by less, and further payments would be discounted by more.
2 [See *id.*] Based upon this formula, Balboa calculated that the amount due totaled
3 \$58,813.38. [See *id.*]

4 Following the date of default and after the commencement of this Action,
5 Defendants made two (2) further monthly payment in full for November 29, 2023
6 and December 29, 2023. [See *id.*, ¶8.] As such, Balboa has credited Defendants in
7 the amount of \$3,478.28, and subtracted that total from the amount sought by way
8 of this Motion, thus totaling **\$55,335.10** remaining owed to Balboa. [See *id.*]
9 Defendants have since failed to make further payments. [See *id.*]

10 There is no doubt, and it cannot be disputed that: (1) Balboa and Defendants
11 entered into EFA No. 1; (2) Steven and Shelly each personally guaranteed, in
12 writing, the payment of the then-existing and future indebtedness due and owing to
13 Balboa under the terms of EFA No. 1; (3) Montante received the loan in order to
14 finance Collateral No. 1 for its business; (4) Defendants ceased making payments
15 pursuant to EFA No. 1; and (5) Balboa has suffered and continues to suffer
16 damages due to Defendants' continued nonpayment. Thus, Balboa has a
17 substantially high likelihood in succeeding on the merits of its claims. In fact, no
18 known defenses exist to any of the material facts.

19 As to EFA No. 2, here, all elements are equally met. Specifically, Balboa, on
20 the one hand, and Montante, on the other, entered into EFA No. 2, under which
21 Balboa loaned to Montante the sum of \$64,200.00, in order to finance Collateral
22 No. 2 for its business. [See Ngo Decl., ¶11, Exh. C.]

23 Concurrent with the execution of EFA No. 2, and in order to induce Balboa
24 to enter into EFA No. 2 with Montante, Steven and Shelly each personally
25 guaranteed, in writing, the payment of the then-existing and future indebtedness due
26 and owing to Balboa under the terms of the EFA No. 2 via Guaranty No. 2. [See
27 *id.*, ¶12, Exh. D.] Balboa relied on such Guaranty No. 2 to agree to finance
28 Collateral No. 2 for Montante's business. [See *id.*]

1 Under EFA No. 2, Montante was required to make six monthly payments of
2 \$99.00, and sixty (60) monthly payments of \$1,421.22, beginning on June 14, 2021.
3 [See *id.*, ¶13, Exh. F.] The last payment received by Balboa was credited toward
4 the payment due for November 14, 2023. [See *id.*] Therefore, on December 14,
5 2023, Montante breached EFA No. 2, and Steven and Shelly breached Guaranty
6 No. 2, by failing to make the monthly payment due on that date, and thus, both have
7 remained continuously in default. [See *id.*]

8 At the time of Defendants' default, in addition to the late charges in the sum
9 of \$255.82, there remained thirty-five (35) monthly payments in the amount of
10 \$1,421.22, for a total of \$49,998.52, due to Balboa. [See *id.*, ¶14.]

11 Pursuant to the "Default and Remedies" section on page 3 of EFA No. 2, in
12 the event of a default, Balboa may: "... (c) accelerate and declare all sums due and
13 to become due hereunder immediately due and payable, all future payments
14 discounted at 3% as calculated by us ..." [See *id.*, ¶15.] Balboa's calculation of the
15 3% discount is made pursuant to a PV accounting formula that is calculated to
16 discount each future monthly accelerated payment down to what the present value
17 would in today's dollar figure. [See *id.*] For example, a payment owed exactly one
18 year from today would be discounted by the full 3%, whereas earlier payments
19 would be discounted by less, and further payments would be discounted by more.
20 [See *id.*] Based upon this formula, Balboa calculated that the amount due totaled
21 \$48,062.11. [See *id.*]

22 Following the date of default and after the commencement of this Action,
23 Defendants made one (1) further monthly payment in full for December 14, 2023
24 and one (1) partial for January 14, 2024 for \$100.50. [See *id.*, ¶16.] As such,
25 Balboa has credited Defendants in the amount of \$1,521.72, and subtracted that
26 total from the amount sought by way of this Motion, thus totaling **\$46,540.39**
27 remaining owed to Balboa. [See *id.*] Defendants have since failed to make further
28 payments. [See *id.*]

1 There is no doubt, and it cannot be disputed that: (1) Balboa and Defendants
2 entered into EFA No. 2; (2) Steven and Shelly each personally guaranteed, in
3 writing, the payment of the then-existing and future indebtedness due and owing to
4 Balboa under the terms of EFA No. 2; (3) Montante received the loan in order to
5 finance Collateral No. 2 for its business; (4) Defendants ceased making payments
6 pursuant to EFA No. 2; and (5) Balboa has suffered and continues to suffer
7 damages due to Defendants' continued nonpayment. Thus, Balboa has a
8 substantially high likelihood in succeeding on the merits of its claims. In fact, no
9 known defenses exist to any of the material facts.

10 **C. The Sum Of Money At Stake Favors An Entry Of A Default**
11 **Judgment Against Defendant.**

12 As a general rule, courts factor the sum of money at stake on a case-by-case
13 basis, and in relation to the other factors influencing whether to enter default
14 judgment. *See Eitel*, 782 F.2d at 1472 (default judgment was denied where plaintiff
15 was seeking \$3 million in damages *and* the parties disputed material facts). This
16 requires the court to assess whether the recovery sought is proportional to the harm
17 caused by defendant's conduct. *See Walters v. Statewide Concrete Barrier, Inc.*,
18 No. C 04-2559 JSW, 2006 WL 2527776, at *4 (N.D. Cal. Aug. 30, 2006) (“[i]f the
19 sum of money at issue is reasonably proportionate to the harm caused by the
20 defendant's actions, then default judgment is warranted”).

21 In *Penpower Tech, Ltd. v. S.P.C. Tech.*, 627 F. Supp. 2d 1083 (N.D. Cal.
22 2008), despite reasoning that plaintiff's request for \$677,075.37 in treble damages,
23 \$500,000.00 in punitive damages, \$100,000.00 in statutory damages, attorneys'
24 fees of \$16,497.00, and costs of \$2,005.00, were “speculative” and weighed against
25 default judgment, the court nevertheless granted plaintiff's default judgment.

26 Here, Balboa seeks compensatory damages pursuant to EFA No. 1 in the
27 amount of **\$55,335.10**; prejudgment interest from November 29, 2023, the date of
28 breach, to June 10, 2024, the date noticed for the hearing of this Default Motion, in

1 the amount of **\$2,941.04**, plus **\$15.16 per day** until the entry of judgment; statutory
2 attorneys' fees, in the amount of **\$3,813.40**; and costs in the amount of **\$702.00**.
3 [See Densen Decl., ¶¶5-7, Exh. G.] The damages sought are contractually-based
4 and arise out of the clear terms and obligations of EFA No. 1; the prejudgment
5 interest was calculated at the statutory rate of ten percent (10%) per annum; and the
6 attorneys' fees requested are fixed by Local Rule 55-3. [See *id.*, ¶7.]

7 Additionally, Balboa seeks compensatory damages pursuant to EFA No. 2 in
8 the amount of **\$46,540.39**; prejudgment interest from December 14, 2023, the date
9 of breach, to June 10, 2024, the date noticed for the hearing of this Default Motion,
10 in the amount of **\$2,282.25**, plus **\$12.75 per day** until the entry of judgment;
11 statutory attorneys' fees, in the amount of **\$3,392.42**. [See Densen Decl., ¶¶8-10.]
12 The damages sought are contractually-based and arise out of the clear terms and
13 obligations of EFA No. 2; the prejudgment interest was calculated at the statutory
14 rate of ten percent (10%) per annum; and the attorneys' fees requested are fixed by
15 Local Rule 55-3. [See *id.*, ¶8.]

16 As such, the sum of money sought is reasonable and far from speculative. It
17 is also substantially less than the \$3 million sought in *Eitel*, in which this sum, and
18 other factors, weighed in the favor of denying default judgment. And it is also
19 substantially less than the roughly \$1.3 million sought in *Penpower Tech*, in which
20 default judgment was granted, despite the sum of money being deemed
21 "speculative."

22 Thus, the sum of money sought in this action weighs in the favor of granting
23 default judgment, especially in the light of the other seven *Eitel* factors, and due to
24 the certainty and reasonableness of the sum.

25 **D. There Are No Material Facts That Are Reasonably In Dispute.**

26 "The general rule of law is that upon default[,], the factual allegations of the
27 complaint, except those relating to the amount of damages, will be taken as true."
28 See *Geddes, supra*, 559 F.2d at 560. Where a plaintiff's complaint is well-pleaded

1 and the defendants make no effort to properly respond, the likelihood of disputed
2 facts is very low. *See Landstar Ranger, Inc. v. Parth Enters, Inc.*, 725 F.Supp.2d
3 916, 921 (C.D. Cal. 2010).

4 As thoroughly detailed in Section II.B., *supra*, there are no material facts that
5 are reasonably in dispute.

6 Here, specifically, Balboa, on the one hand, and Montante, and Steven and
7 Shelly, on the other, entered into EFA No. 1 on or about March 30, 2021. [*See* Ngo
8 Decl., ¶3, Exh. A.] Under the terms of EFA No. 1, Balboa loaned to Montante the
9 sum of \$78,440.00, in order to finance Collateral No. 1 for its business. [*See id.*]

10 Concurrent with the execution of EFA No. 1, and in order to induce Balboa
11 to enter into EFA No. 1 with Montante, Steven and Shelly each personally
12 guaranteed, in writing, the payment of the then-existing and future indebtedness due
13 and owing to Balboa under the terms of EFA No. 1 via Guaranty No. 1. [*See id.*,
14 ¶4, Exh. A.] Balboa relied on such Guaranty No. 1 to agree to finance Collateral
15 No. 1 for Montante's business. [*See id.*]

16 Under EFA No. 1, Montante was required to make six (6) monthly payments
17 of \$99.00, and sixty (60) monthly payments of \$1,739.14 beginning on April 29,
18 2021. [*See id.*, ¶5, Exh. B.] The last payment received by Balboa was credited
19 toward the payment due for October 29, 2023. [*See id.*] Therefore, on November
20 29, 2023, Montante breached EFA No. 1, and Steven and Shelly each breached
21 Guaranty No. 1, by failing to make the monthly payment due on that date, and thus,
22 both have remained continuously in default. [*See id.*]

23 At the time of Defendants' default, in addition to the late charges in the sum
24 of \$313.05, there remained thirty-five (35) monthly payments in the amount of
25 \$1,739.14, for a total of \$61,182.95, due to Balboa. [*See id.*, ¶6.]

26 Pursuant to the "Defaults and Remedies" section of page 3 of EFA No. 1,
27 Balboa applies a 3% PV discount to all accelerated payments. [*See id.*, ¶7.] Based
28

1 upon this accounting formula, Balboa calculated that the amount due total
2 \$58,813.38. [*See id.*]

3 Following the date of default and after the commencement of this Action,
4 Defendants made two (2) further monthly payment in full for November 29, 2023
5 and December 29, 2023. [*See id.*, ¶8.] As such, Balboa has credited Defendants in
6 the amount of \$3,478.28, and subtracted that total from the amount sought by way
7 of this Motion, thus totaling **\$55,335.10** remaining owed to Balboa. [*See id.*]
8 Defendants have since failed to make further payments. [*See id.*]

9 And as for EFA No. 2, here, specifically, Balboa, on the one hand, and
10 Montante, and Steven and Shelly, on the other, entered into EFA No. 2 on or about
11 March 31, 2021. [*See id.*, ¶11, Exh. C.] Under the terms of EFA No. 2, Balboa
12 loaned to Montante the sum of \$64,200.00, in order to finance Collateral No. 2 for
13 its business. [*See id.*]

14 Concurrent with the execution of EFA No. 2, and in order to induce Balboa
15 to enter into EFA No. 2 with Montante, Steven and Shelly each personally
16 guaranteed, in writing, the payment of the then-existing and future indebtedness due
17 and owing to Balboa under the terms of the EFA No. 2 via Guaranty No. 2. [*See*
18 *id.*, ¶12, Exh. D.] Balboa relied on such Guaranty No. 2 to agree to finance
19 Collateral No. 2 for Montante's business. [*See id.*]

20 Under EFA No. 2, Montante was required to make six monthly payments of
21 \$99.00, and sixty (60) monthly payments of \$1,421.22, beginning on June 14, 2021.
22 [*See id.*, ¶13, Exh. F.] The last payment received by Balboa was credited toward
23 the payment due for November 14, 2023. [*See id.*] Therefore, on December 14,
24 2023, Montante breached EFA No. 2, and Steven and Shelly breached Guaranty
25 No. 2, by failing to make the monthly payment due on that date, and thus, both have
26 remained continuously in default. [*See id.*]

1 At the time of Defendants' default, in addition to the late charges in the sum
2 of \$255.82, there remained thirty-five (35) monthly payments in the amount of
3 \$1,421.22, for a total of \$49,998.52, due to Balboa. [See *id.*, ¶14.]

4 Pursuant to the "Defaults and Remedies" section of page 3 of EFA No. 1,
5 Balboa applies a 3% PV discount to all accelerated payments. [See *id.*, ¶15.]
6 Based upon this accounting formula, Balboa calculated that the amount due total
7 \$48,062.11. [See *id.*]

8 Following the date of default and after the commencement of this Action,
9 Defendants made one (1) further monthly payment in full for December 14, 2023
10 and one (1) partial for January 14, 2024 for \$100.50. [See *id.*, ¶16.] As such,
11 Balboa has credited Defendants in the amount of \$1,521.72, and subtracted that
12 total from the amount sought by way of this Motion, thus totaling **\$46,540.39**
13 remaining owed to Balboa. [See *id.*] Defendants have since failed to make further
14 payments. [See *id.*]

15 Defendant cannot dispute any of the facts in any way or make any reasonable
16 arguments surrounding any of the material facts in this action. If anything,
17 Defendant's refusal to participate in, or even acknowledge the litigation, is evidence
18 that no such defense exists.

19 **E. Defendants' Defaults Are Not The Result Of Excusable Neglect.**

20 Excusable neglect is not found where a defendant who was properly served
21 simply ignored the deadline to respond. See *NewGen, LLC v. Safe Cig, LLC*, 804
22 F.3d 606, 616 (9th Cir. 2016) (adding that defendant's counsel contacting plaintiff's
23 counsel after default had been entered did not constitute to "excusable neglect"). In
24 fact, courts have required some showing of good faith by the defaulted defendant to
25 constitute "excusable neglect." See *Eitel*, 782 F.2d at 1471-72 (defendant's failure
26 to answer was held to be excusable neglect in light of ongoing settlement
27 negotiations); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986) (finding
28 excusable neglect where defendant filed an answer past the deadline and on the

1 same day that the motion for default judgment was filed); *O'Connor v. State of*
2 *Nevada*, 27 F.3d 357, 364 (9th Cir. 1994) (excusable neglect was found where
3 defendant has good faith of a timely answer); *Educational Serv., Inc. v. Maryland*
4 *State Board for Higher Education*, 710 F.2d 170, 176 (4th Cir. 1983) (excusable
5 neglect found where defendant had appeared in the action and opposed a request for
6 a preliminary injunction in which the party had set forth its defenses); *McKnight v.*
7 *Webster*, 499 F.Supp. 420, 424 (E.D. PA 1980) (excusable neglect found where
8 defendant sought an extension of time to respond, but a default judgment was
9 sought in the interim).

10 Where the defendants “were properly served with the Complaint, the notice
11 for the entry of default, as well as documents in support of the instant [default
12 judgment application],” favors this factor for the entry of default judgment. *See*
13 *Shanghai Automation Instrument Co. Ltd. v. Kuei*, 194 F.Supp.2d 995, 1005 (N.D.
14 Cal. 2001).

15 Here, Defendant failed to make any showing whatsoever that their
16 unwillingness to participate in the litigation stemmed from, or was in any way due
17 to, excusable neglect. Jeremy A. Ball was properly served via personal service, as
18 the agent for service of process for Montante. [See Dkt. 10.] Steven and Shelly was
19 properly served by substituted service by leaving copies with Chloe Adams,
20 daughter/co-occupant. [See Dkt. 16-17.]

21 Further, Defendants were additionally served at the same address thereafter
22 with the Default Entry Requests. [See Dkt. 12, 18.] Defendants have not yet made
23 any appearance in the action, and thus, have not made any effort to answer, defend,
24 or otherwise participate, in this action.

25 As detailed above, courts have found for excusable neglect only in cases in
26 which a defendant makes good faith showing that the defendant attempts to
27 participate in the litigation to address and defend the allegations set forth against the
28 defendant. Declining to respond to a complaint after proper service (even in the

1 case where defendant's counsel contacts plaintiff's counsel after the entry of
2 default), does not warrant a finding of excusable neglect. *See NewGen*, 804 F.3d at
3 616.

4 Here, Defendants have failed to acknowledge their wrongdoings and the
5 allegations they face, even in the slightest degree. Instead, Defendants have
6 blatantly ignored Balboa's Complaint and all other papers filed thereafter. Rather,
7 Defendant's course of action in response to Balboa's Complaint, or the apparent
8 lack thereof, is intentional, and thus, would not constitute excusable neglect.

9 **F. Policy Concerns Favor Default Judgment In This Matter.**

10 Although courts have expressed that as a general rule, policy favors decisions
11 on the merits, cases should be decided on its merits only when *reasonably possible*.
12 *See Pena v. Seguros La Comercia, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)
13 (emphasis added). The policy preference to decide a case on its merits is not
14 dispositive, and thus, does not preclude a court from granting a default judgment.
15 *See Penpower Tech, Ltd.*, 627 F.Supp.2d at 1093 (defendants' failure to respond to
16 a Complaint makes a case decision on its merits impractical, if not, impossible).

17 Here, even the policy concerns to decide a case on its merits favor Balboa to
18 grant Balboa's request for a default judgment. As detailed in II.E., *supra*,
19 Defendant has made it abundantly clear that they will not participate in this
20 litigation, or even acknowledge the instant action. Defendant has deliberately
21 chosen a course of action to simply ignore Balboa and its claims against them,
22 including their own liability. Thus, the Court's decision will not be based on the
23 merits of this case since there is no reasonable possibility at this point given
24 Defendant's refusal to participate in this litigation.

25 Moreover, policy concerns certainly do not weigh in favor of rewarding
26 Defendant for their unwillingness to account for their liability to Balboa, and the
27 extremely prejudicial windfall they would receive should their deliberate silence
28 and stalling techniques be rewarded, at Balboa's expense. *See Section II.A., supra*.

1 **G. Plaintiff Has Proven Its Damages.**

2 Under EFA No. 1, Montante was required to make six (6) monthly payments
3 of \$99.00, and sixty (60) monthly payments of \$1,739.14 beginning on April 29,
4 2021. [See *id.*, ¶5, Exh. B.] The last payment received by Balboa was credited
5 toward the payment due for October 29, 2023. [See *id.*] Therefore, on November
6 29, 2023, Montante breached EFA No. 1, and Steven and Shelly breached Guaranty
7 No. 1, by failing to make the monthly payment due on that date, and thus, both have
8 remained continuously in default. [See *id.*]

9 At the time of Defendants' default, in addition to the late charges in the sum
10 of \$313.05, there remained thirty-five (35) monthly payments in the amount of
11 \$1,739.14, for a total of \$61,182.95, due to Balboa. [See *id.*, ¶6.]

12 Pursuant to the "Defaults and Remedies" section of page 3 of EFA No. 1,
13 Balboa applies a 3% PV discount to all accelerated payments. [See *id.*, ¶7.] Based
14 upon this accounting formula, Balboa calculated that the amount due total
15 \$58,813.38. [See *id.*]

16 Following the date of default and after the commencement of this Action,
17 Defendants made two (2) further monthly payment in full for November 29, 2023
18 and December 29, 2023. [See *id.*, ¶8.] As such, Balboa has credited Defendants in
19 the amount of \$3,478.28, and subtracted that total from the amount sought by way
20 of this Motion, thus totaling **\$55,335.10** remaining owed to Balboa. [See *id.*]
21 Defendants have since failed to make further payments. [See *id.*]

22 In addition, based on the amount due of \$55,335.10, Balboa is entitled to
23 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
24 November 29, 2023, the date of breach, to June 10, 2024, the date noticed for the
25 hearing of this Default Motion, for a total interest amount of **\$2,941.04**, accruing at
26 a rate of **\$15.16 per day**, until the entry of judgment. [See *id.*, ¶9; *see also* Densen
27 Decl., ¶¶5-7.]
28

1 Pursuant to Paragraph 20 of EFA No. 1, Balboa is entitled to recover its
2 attorneys' fees and costs from Defendant. [See Densen Decl., ¶7.] The amount of
3 reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of **\$3,813.40**.
4 [See *id.*] Balboa has incurred **\$702.00**, in recoverable costs. [See *id.*]

5 Additionally, under EFA No. 2, Montante was required to make six (6)
6 monthly payments of \$99.00, and sixty (60) monthly payments of \$1,421.22,
7 beginning on June 14, 2021. [See Ngo Decl., ¶13, Exh. E.] The last payment
8 received by Balboa was credited toward the payment due for November 14, 2023.
9 [See *id.*] Therefore, on December 14, 2023, Montante breached EFA No. 2, and
10 Steven and Shelly breached Guaranty No. 2, by failing to make the monthly
11 payment due on that date, and thus, both have remained continuously in default.
12 [See *id.*]

13 At the time of Defendants' default, in addition to the late charges in the sum
14 of \$255.82, there remained thirty-five (35) monthly payments in the amount of
15 \$1,421.22, for a total of \$49,998.52, due to Balboa. [See *id.*, ¶14.]

16 Pursuant to the "Defaults and Remedies" section of page 3 of EFA No. 1,
17 Balboa applies a 3% PV discount to all accelerated payments. [See *id.*, ¶15.]
18 Based upon this accounting formula, Balboa calculated that the amount due total
19 \$48,062.11. [See *id.*]

20 Following the date of default and after the commencement of this Action,
21 Defendants made one (1) further monthly payment in full for December 14, 2023
22 and one (1) partial for January 14, 2024 for \$100.50. [See *id.*, ¶16.] As such,
23 Balboa has credited Defendants in the amount of \$1,521.72, and subtracted that
24 total from the amount sought by way of this Motion, thus totaling **\$46,540.39**
25 remaining owed to Balboa. [See *id.*] Defendants have since failed to make further
26 payments. [See *id.*]

27 In addition, based on the amount due of \$46,540.39, Balboa is entitled to
28 prejudgment interest at the statutory rate of ten percent (10%) per annum, from

December 14, 2023, the date of breach, to June 10, 2024, the date noticed for the hearing of this Default Motion, for a total interest amount of **\$2,282.25**, accruing at a rate of **\$12.75 per day**, until the entry of judgment. [*See id.*, ¶17; *see also* Densen Decl., ¶¶8-9.]

Pursuant to Paragraph 20 of EFA No. 2, Balboa is entitled to recover its attorneys' fees and costs from Defendant. [*See* Densen Decl., ¶10.] The amount of reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of **\$3,392.42**. [*See id.*]

Altogether, this totals out to **\$115,006.60** (as of June 10, 2024), calculated as follows:

EFA No. 1:

- Amount owed: \$ 55,335.10
- Prejudgment Interest: \$ 2,941.04
- Attorneys' Fees: \$ 3,813.40

EFA No. 2:

- Amount owed: \$ 46,540.39
- Prejudgment Interest: \$ 2,282.25
- Attorneys' Fees: \$ 3,392.42

Costs:

- Recoverable Costs: \$ 702.00
- **Total** **\$115,006.60**

//

//

//

//

//

//

//

1 **III. CONCLUSION**

2 Based on Balboa's Complaint, Default Judgment Motion, and all supporting
3 papers, Balboa respectfully requests that the Court grant its Default Judgment
4 Motion against Defendants, in the total amount of **\$115,006.60**.

5
6 DATE: April 26, 2024

SALISIAN | LEE LLP

7
8 By: 

9 Jared T. Densen

10 Neal S. Salisian

11 Glenn R. Coffman

12 Attorneys for Plaintiff
13 AMERIS BANK d/b/a BALBOA CAPITAL
14 CORPORATION
15
16
17
18
19
20
21
22
23
24
25
26
27
28